IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5834 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHBHAI JIVRAJBHAI

Versus

DISTIRCT DEVELOPMENT OFFICER

Appearance:

MR NK PAHWA for Petitioner

MR JD AJMERA for Respondent No. 1

MR GM JOSHI for Respondent No. 2, 3 (Intervenors)

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. This is a petition under Article 226 of the Constitution wherein the petitioner is praying for quashing and setting aside of the order of the respondent No.1 dated 1-7-1988 annexure `B' under which the

petitioner and other persons were directed to pull down the structure of the building situated on plots No.1, 2, 72 and 84 of Survey No.252 of village Damnagar. The petitioner's father purchased the plots No.1 and 2 from its original owner Jivrajbhai Hirjibhai. After taking permission for construction from the Gram Panchayat on those plots, the construction of the building has been made by the father of the petitioner. The impugned order has been passed on the ground that one of the conditions attached to the sale of those plots was that the construction put thereon has to be used only for residential purpose. The intervenors have made a complaint to the respondent No.1 that the petitioner is not using the building put on the plots for residential purposes but it is being used for diamond cutting industry. After giving notice to the petitioner, this order has been passed. Hence, this special civil application.

2. Learned counsel for the petitioner contended that the petitioner is not using the construction put on the land for any purpose other than the residential purpose. It has next been contended that there is no material produced before the respondent in support of the allegations made against the petitioner that he is using the construction in dispute for the purpose other than residential purpose. Learned counsel for the petitioner submitted that the construction made, the petitioner is using the same only for residential purpose for himself and his family which is a large family. It is further contended that this court has permitted the petitioner to construct the first floor over the existing ground floor for the residential purpose under the order passed on civil application No.1048 of 1993 with the condition that the construction so put has to be used only for the residential purpose. An undertaking to this effect has also been filed by the petitioner in this court. Both the ground and the first floor, the petitioner is using for residential purpose. Lastly, it is contended that even if it is taken that the petitioner has used this construction for diamond cutting industry, then at the most, the petitioner would have been asked to discontinue that use rather than to go to the extent of ordering for demolition of the construction itself.

3. Shri J.D. Ajmera, learned counsel for the respondent No.1 submitted that the condition subject to which this land came in the hands of the predecessor in title of the petitioner , that condition has to be strictly complied with. As per that condition whatever construction put on the land has to be used only for

residential purpose and in breach thereof, the holder incurs disability and the authority has not committed any error much less any illegality in ordering for demolition of the construction. It has next been contended that on the basis of the material produced on the record, the authority was satisfied that the petitioner is using the construction for the purpose other than the residential purpose. In his submission, this court may not interfere with this order of the authority below. However, when he was confronted with the contention of the learned counsel for the petitioner that even if it is taken to be a case of using of construction for the purpose other than the residential purpose, the petitioner should have been asked by the authority to discontinue that use, Shri Ajmera contends that once the condition subject to which this property was given is violated then consequences thereof are to be followed. Lastly, it is contended that the petitioner himself is responsible for all these creations and he cannot be given the benefits of his own wrong or illegalities.

4. Learned counsel for the intervenors contended that the petitioner applied for the conversion of the use of the land from residential to commercial and that application came to be rejected by the competent authority. The appeal preferred against this order by the petitioner has also been dismissed. The petitioner brought that matter before this court by filing the special civil application which is pending. From these fats though which have not been brought on the record in the form of affidavit, it is contended by the learned counsel for the intervenors that the petitioner has admitted that he is using the construction for the purpose other than the residential purpose. It is pertinent to mention that the counsel for the intervenors, when asked by the court is unable to give out what material has been collected by the respondent authority before passing the impugned order, he is unable to give out anything. The intervenors themselves have also not produced any material to show or controvert the statement made by the petitioner that they are not using this construction for non-residential purpose.

5. In rejoinder, the learned counsel for the petitioner referring to the pleadings made in para-3(i) contended that the respondents are very partisan in their action. Shri Pahwa, learned counsel for the petitioner contended that both the intervenors as well as the respondents are exhibiting a clear example of favouritism. If the petitioner has to be penalised for his action of committing breach of terms of conditional

grant then this trust referred in para 3(i) also incurred disability but in its case the construction put on the land was not ordered to be demolished.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. On the record of this special civil application from the side of the respondents, no material has been produced to show and establish to the satisfaction of the court that the ground floor of the building is used by the petitioner for commercial purposes i.e. diamond cutting industry. It is the say of the petitioner consistently throughout the proceedings, from the original authority to this court, that it has not used the premises for the purpose aforestated. In the absence of any cogent and material evidence from the side of the respondents, the say of the petitioner has to be accepted but from these proceedings as well as the facts stated by Shri G.M. Joshi, though orally, possibility of using this floor for diamond cutting industry by the petitioner cannot be excluded.

8. A question which falls for consideration is that even if it is taken that the breach of condition of grant has been made by the petitioner, still such a drastic action deserves to be taken by the authority ? It is a case where the construction has been put and it is also not in dispute that the construction put on the land by the petitioner after taking permission for the same from the Gram Panchayat. It is not a case where any encroachment has been made by the petitioner on the Government or the Panchayat land or construction has been made without taking prior permission from the Gram Panchayat. It is not in dispute that the Gram Panchayat was competent to grant permission to the petitioner for raising of the construction. So upto the stage of raising of construction, there was no breach of condition of grant of land. Breach if any is made is subsequent to construction. A part of the Building, as per the case of the respondents, has been put for use of diamond cutting industry. Even if it is accepted that this use has been made by the petitioner of this building, in the facts of this case, at the most, he could have been asked to discontinue the industry from the premises and ensure that it is only being used for residential purpose.

9. In the State, it is not unknown that many of the residential premises are often used for commercial purposes. These are all used in breach of conditions of grant of land or the construction. It is a reality and

the same are being permitted to continue. If we go by this reality, then the insistence of the respondent No.1 should have been to see that this condition is enforced in all the cases and not in the way and the manner in which what it is sought to be done in this case. Demolition of house may not be an ultimate solution for discontinuation of this type of activity but enforcement of law strictly is the only need of the time. This is possible only when the people also equally cooperate. The petitioner being a citizen of the country is expected to be a law abiding citizen. It is not the liberty, licence or passport given to the petitioner to violate the law of the land or to act contrary to conditions subject to which land has been allotted to him. If the petitioner takes law in his own hands and if the authorities take the action and which has been challenged by him before the court, the court can legitimately decline to grant any relief to him under its extraordinary equitable jurisdiction. It is utmost necessary that the litigant who approaches to this court for protection under its extraordinary equitable jurisdiction, has to project himself as a bonafide, honest and a law abiding citizen. If the litigant himself breaks the law or act contrary to law certainly he deserves no sympathy and no relief can be granted to him by this court under its extraordinary equitable jurisdiction.

10. But in this case, as stated earlier, it is not proved by cogent and satisfactory evidence that the petitioner has changed the use of the premises. The fact which has been stated orally by Shri G.M. Joshi, learned counsel for the intervenors, if is correct then certainly an inference can be drawn that the petitioner is using the part of the premises for commercial activities but that matter is subjudice before this court and possibility of relief to be granted to the petitioner cannot be excluded. At the same time, it is not unknown or uncommon in the country that many of the occupiers or the owners of the residential premises pray for conversion of the use of the land from residential to commercial. Only on the basis of this application, it is too difficult in the absence of any other evidence to draw any inference. However, the problem is not that much of serious nor it is a pathetic condition where the court or the respondents cannot find a reasonable solution thereof. Facts stated by the petitioner in para-3(i) have not been controverted by the respondent No.1 in the reply affidavit. The facts made in para-3(i) of the special civil application stand uncontroverted. So it is a clear case where the respondent has not acted

fairly, impartially and reasonably. If breach of condition of allotment of land has been made by the petitioner then he has to be dealt with accordingly but at the same time the authority has to exhibit an example of fair, reasonable and impartial officer where he applies the rule of law equally to all the defaulters. That has not been done in the present case. It is true that in this writ petition this court cannot go on and enter in the circle to examine the validity of the alleged action of the trust to use hostel building for diamond cutting industry. It is also equally true that on the illegal action of the authorities, no plea of discrimination can be raised by the petitioner. But it is equally also a matter of serious concern to the court that if that person has been left out from any action to be taken against it it will give a heart burning as well as frustration to the other persons and they will go with the belief that the courts are also equally not applying law to the persons identically situated. The course which could have been followed to order for impleadment of trust mentioned in para-3(i) of the special civil application as respondent in this petition but looking to the fact that this petition is of the year 1988, I do not consider it to be appropriate to give this petition a fresh long life. Second option is there to give direction to the respondent No.1 to hold an inquiry in the matter after giving notice to the petitioner and if ultimately what the petitioner stated in para-3(i) is found to be correct then appropriate action has to be taken against that trust also. This can possibly be ordered by this court.

11. In the result, this special civil application succeeds and the same is allowed. The action of the respondent to propose the demolition of construction put by the petitioner on the land in question, and the order passed of demolishing the construction of the petitioner are declared to be illegal and accordingly the same are quashed and set aside. However, the petitioner if he is using the ground floor for this activity of running diamond cutting industry, he has to forthwith close that. For this, the petitioner has to file an undertaking before this court that he is not using the ground floor premises for diamond cutting industry or where he is using he has already removed that machines from the premises. This undertaking is to be filed by the petitioner within a period of one month from the date of receipt of writ of this order. At any point of time, if the petitioner is found running of this diamond cutting industry at the premises, on complaint he can be punished for committing the contempt of the court. After filing

of this undertaking, the court will decide what course is to be adopted to ensure what the petitioner stated is correct. The respondent No.1 is directed to hold an inquiry in the matter of the trust, reference of which has been made by the petitioner in the para-3(i) of the special civil application. Necessary inquiry is to be conducted and final decision is to be taken in that matter within a period of three months from the date of receipt of writ of this order. Both the trust as well as the petitioner may be given an opportunity of hearing in those proceedings and compliance of the order is to be reported to this court. The writ petition of the petitioner filed in this court in the matter of grant of permission to him for conversion of use of the building from residential to commercial is decided in his favour then he can proceed according to the decision of this court in that matter. This decision will have no relevance whatsoever in the petition what Shri G.M. Joshi stated has been filed by the petitioner in this court and is pending. Rule is made absolute accordingly with no order as to costs.

****

zgs/-